

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1943-SB-2016(O&M)

Date of decision:-24.8.2022

Dharampal

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Dhaliwal, Advocate (Legal Aid Counsel)
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Dharampal was tried by Special Judge, Fatehgarh Sahib in case FIR No.27 dated 15.3.2013 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Amloh, on the allegations that on 15.3.2013 at about 7:00 a.m. in the area of village Salana Dulla Singh Wala, when apprehended by the police party led by ASI Bhupinder Kumar, he was found in possession of 18 kgs. of poppy-husk without any permit or licence. In terms of judgment dated 16.2.2016, the accused/appellant was convicted in that case for the offence for which he was booked and vide order of that very date, he was sentenced to

undergo rigorous imprisonment for 3 years and to pay a fine of ₹30,000/- and in default thereof to further undergo rigorous imprisonment for a period of 3 months.

2. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellant Dharampal had preferred the present appeal before this Court, which was put up on 19.5.2016 when after allowing application under Section 5 of the Limitation Act and condoning the day of 31 days in filing of the appeal, it was Admitted for regular hearing and recovery of fine was ordered to remain stayed during the pendency of the appeal. On an application having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the remaining sentence of the appellant was ordered to be suspended during the pendency of appeal on 26.7.2016.

3. Now the case has come up for regular hearing.

4. I have heard learned counsel for the appellant and learned State counsel besides going through the record.

5. At the very outset, learned counsel for the appellant states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence.

6. I find that the judgment passed by the trial Court is quite detailed and well reasons and does not suffer from any illegality or infirmity, which might have called for interference. The witness of recovery, namely, PW3 ASI Bhupinder Kumar, the Investigating Officer of the case as well as PW1 HC Kamaljit Singh have fully supported the prosecution story with regard to accused having been found in conscious

possession of 18 kgs. of poppy husk on the date, time and place as per the prosecution story. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material points. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs come out to be worthy of reliance.

7. From the statement of PW2 HC Munni Lal, the then MHC of Police Amloh and PW5 Constable Manpreet Singh, who had taken the sample parcel to the office of Chemical Examiner, Punjab, it comes out that no tampering with the case property including the sample parcel had taken place and the sample parcel had reached at the office of Chemical Examiner, Punjab with seal intact. The report from the office of Chemical Examiner also goes to show that. This report further reveals that on analysis, the sample parcel was found to be that of poppy husk. The remaining evidence adduced by the prosecution corroborates its version. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for in possession of poppy husk without any licence or permit thereby showing that he was in conscious possession of such contraband. The trial Court was justified in convicting the accused for the offence under Section 15 of the Act.

8. As far as the sentence part is concerned, learned counsel appearing for the appellant has contended that the appellant/accused has already undergone 7 months and 21 days of imprisonment in this case;

although he is shown to be involved in another case in the custody certificate but details thereof are not mentioned and it is nowhere reflected that he has been convicted in some other case under the NDPS Act; similarly his conviction in any other case is not reflected. He has further contended that the appellant is old person of 60 years, a poor man and only earning member of the family and the recovery involved in this case amounts to non-commercial quantity, which does not attract minimum sentence, as such a lenient view in the matter be taken.

9. Whereas learned State counsel has contended that sentence awarded to the appellant is not on higher side and does not call for any reduction.

10. After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellant deserves to be accepted. The contraband recovered from the appellant/accused, the same being quite less than commercial quantity. Furthermore, the appellant has already undergone actual sentence of 7 months and 21 days out of the substantive sentence awarded to him.

11. In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused is directed to deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Fatehgarh Sahib

by issuing Non-bailable warrants of arrest against him.

12. As such the appeal challenging the impugned judgment stands disposed of with above modification in sentence.

Intimation be sent to Chief Judicial Magistrate, Fatehgarh Sahib for necessary compliance.

24.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes